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International Monitoring Operation
*Project for the Support to the Process of Temporary
Re-evaluation of Judges and Prosecutors in Albania*



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International Monitoring Operation
Prot. No. 911
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To the
Public Commissioners' Institution
Bulevardi "Deshmoret e Kombit", Nr. 6
Tirana
Albania

Case Number **DC-P/KAV/1/01**
Assessee **Artan MADANI**

RECOMMENDATION TO FILE AN APPEAL

according to the Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article B, paragraph 3, letter c



Introduction

The Assessee Artan Madani holds the office of chief prosecutor of the prosecution office before the first instance in Court in Kavaje. He is assessed *ex officio* pursuant to Article 179/b, paragraph 3 of the Constitution of the Republic of Albania.

The re-evaluation process was carried out based on three criteria: assets, background and proficiency. Upon administering the reports of the auxiliary bodies, thorough investigation of the case, administering evidence obtained through the investigation process and submitted by the Assessee, and two finding reports submitted by this the International Observer, the Independent Qualification Commission (hereafter: IQC) adjudication panel closed the investigation on 8th of June 2019, notified the Assessee the findings, and shifted to him the burden to provide evidence or arguments against the preliminary conclusions based on the assets assessment. Following his submissions, the panel decided to summon the Assessee to the hearing of the 27th of June 2019 and following the deliberation as per Article 55 paragraph 5) Vetting Law, the adjudication panel decided to confirm the Assessee in duty pursuant to Article 59 Vetting Law, and the decision was announced publicly on the 1st of July 2019.

Summary of the recommendation

The International Observers recommend to the Public Commissioners to file an appeal against the decision of the Independent Qualification Commission of the 1st of July 2019 in the case of the Assessee Artan Madani, case number DC-P/KAV/1/01, by which he has been confirmed in duty.

Factual and legal reasoning

1. Under paragraph 3 of Article D of the Annex to the Constitution of the Republic of Albania, *“The Assessee has to credibly explain the lawful origin of assets, property and income. Income shall only be considered legitimate if it has been declared and taxes have been paid.”*
Whereas, under paragraph 5 of the same article... *“If the assessee takes steps to inaccurately disclose or hide assets in his or her ownership, possession or use, a presumption for the disciplinary measure of dismissal shall be established which the Assessee shall have the burden to dispel.”*
Furthermore, under article 52 paragraph 2 Vetting Law, *“ If the Commission or the Appeal Chamber concludes that the evidence has reached the standard of proof under Article 45 of*

this Law for its report, the Assessee shall have the burden to provide evidence or arguments about evidence against that conclusion.”

2. The adjudication panel, in its decision of the 8th of June 2019 closing the investigation, endorsed the findings filed by the International Observer. The panel concluded that the investigation revealed: inaccuracy in the disclosure, the failure of the Assessee to provide sufficient evidence supporting the legitimacy of some of the sources of financing, and taking steps to inaccurately disclose, thus the burden of proof, as per article 52 paragraph 2 Vetting Law, was shifted to the Assessee for the following issues related to the revaluation of assets:

2.1. Apartment with surface area 146.46 m² and a garage with surface area 10.5 m², located in: Lagja *** Rr. *** Building, Durrës. Value according to the commission order in 2001: 5.5 million ALL, whereas in the vetting declaration it was stated that the apartment was received in the state of a frame (“karabina”) for the price of 1.700.000, and the Assessee paid the difference in order to complete the construction on his own, starting living there only more than two years after. Source of creation: savings from income earned over the years and voluntary division of the proceeds from the sale of parents’ house in 2000. This asset was re-appraised in 2011 for the value ALL 10.933.353. The documents administered during the investigation led the panel to preliminarily affirm the following shortcomings, with subsequent shifting of the burden of proof to Assessee:

- a. He misrepresented the status of the apartment and the time of purchase and the price paid for the property to the construction company, failing to prove:
 - that – differently from what emerges from the documents acquired to the case file - the apartment was unfinished when purchased;
 - the price which had been actually paid
 - The fact that the apartment was successively completed by him;
- b. He failed to declare the purchase and ownership of the garage in the entry declaration;
- c. He failed to clearly and accurately list in the *vetting* and previous periodic declarations the sources for the financing of this apartment and their respective amounts, in violation of his obligation to fully and truthfully declare. In particular, he inaccurately listed a donation from his family as voluntary division, also

omitting to indicate its precise amount in the vetting declaration. The Assessee also failed to declare the contributions received by his brother and father in law used in whole or part for the financing of this property;

- d. He failed to prove the legitimacy and lawfulness of some of the sources for the financing of this property by failing to provide conclusive evidence of the financial capacity of each of the donors and lenders;
- e. He failed to prove he had sufficient lawful and legitimate funds to finance this property;

2.2. Deposit ALL 5.500.000 at *** Bank (investment fund) and Cash balance at home ALL 1.200.000. Source of creation: savings from the Assessee's and his wife's income.

In the preliminary conclusions the panel contended that:

- a. There were discrepancies between the cash saving reported in the periodic declarations and the reply the Assessee provided in the questionnaires;
- b. According to the financial analysis, the Assessee lacked sufficient declared income to fully justify the investment in *** at *** Bank.

2.3. Ford Explorer motor vehicle with number plate *** formally owned by ***

was not declared by the Assessee in the vetting declarations:

- a. The investigation showed that this vehicle was in use to the Assessee in the period Jun 2015-2016, 2016-2017, and then in use to the spouse of the Assessee – his related person- from Jun 2017-jun 2018.
- b. Furthermore, it was alleged the Assessee took step to conceal the *de facto* ownership of the vehicle "Ford Explorer" with registration number *** formally owned by *** and failed to disclose the use of other vehicles over the years in his periodic declarations.

2.4. The financial analysis showed that the Assessee lacked financial resources in the years 1992-2003 and 2004, 2005, 2006, 2007, for an overall minus of 4.443.012 ALL.

- 3. After being notified of the result of the investigations and about the reversal of the burden of proof, the Assessee provided his interpretation of the financial data, his personal explanation on some of the inconsistencies, and some additional documents. In the opinion of the International Observers, the new elements submitted by the Assessee do not add substantively to the elements already available to the adjudication panel.

4. Despite this, the adjudication panel decided to confirm the Assessee in duty. This is, in the opinion of the International Observers, not justified, because the evidence underpinning the preliminary conclusions was satisfactory and no sufficient countering elements were administered in order to rebut it.
5. The International Observers, considering the result of investigations, the finding report filed by the International Observer during the investigation and the explanations and documents provided in written form by the Assessee, make the following remarks:
 - 5.1. The declaration of the asset described above under 2.1 is still found to be inaccurate and incomplete; the Assessee failed to address the findings of the IQC and the International Observer (to which make hereby full reference is made). The following is noted, in particular:
 - a) As to the Assessee's allegation that the house was bought at an unfinished, very initial stage, the Assessee could not explain why neither the entry declaration nor the sale contract mentioned such unfinished status, nor was he able to produce any evidence of works, identity of workers or otherwise documented investment made to complete the property. This confirms the conclusion that the Assessee purchased a finished apartment (in line with the available certificate of utilization dating back to the year 2000, which enabled the registration of the apartment with LIPRO) at the overall price of 5.500.000 ALL, as declared in his entry declaration. This entails that when the sale contract was finally signed in November 2004, the price for the sale was artificially lowered, and the purchase of the garage concluded.
 - b) The garage (not mentioned in the sale contract of the apartment), nor in the entry declaration, was the object of a second sale contract, signed by the Assessee on the same day; its ownership was transferred for the amount of 250.000 ALL, but it was not declared in any of the periodic declarations. The Assessee explained that he failed to declare the garage because he thought it to be part of a single contract and "accessory" to the apartment; however this is contradicted by the very existence of two separate contracts, both signed by the Assessee, and with an individual price for each of the assets.
 - c) The Assessee's explanations were not only insufficient to rebut the IQC's preliminary conclusions (and the IO's findings), but rather led to identify further inconsistencies and omissions, because:

- i. In neither of his declarations did the Assessee include the specific amount for each of the sources of financing of the apartment (which he vaguely referred to as “savings” or as “voluntary division”). It is worthy to note that the value of each of the alleged donations which were referred to in the subsequent questionnaires is significant, spanning from 250-300.000 ALL to 1.500.000 ALL;
 - ii. The Assessee inaccurately declared as voluntary division what he himself afterwards explained being a donation received by the father, only to correct himself again afterwards with the notarial declaration of 2018 submitted to the IQC, in which his father -the donor-, indicated that the donation of 1.500.000 ALL did not derive only from the sale of the family home, but also from remittances from the Assessee’s brother *** from his work in Italy.
 - iii. The Assessee failed to declare the donation of ALL 300.000 from his brother in law. He is also contradictory about that source of income, in that he, for the first time, indicated it in his reply to the questionnaires as a “donation in kind” for the amount of 300.000 ALL, but he later described it as a monetary contribution for the completion of the construction. The lack of declaration of this donation is not explained by the Assessee, and his justification that there was no dedicated place in the declaration form in order to declare it is contradicted by the fact that the entry, periodic and vetting declarations are accompanied by the same instruction, which specify the obligation to declare all gifts and all sources of creation of assets.
 - iv. During the IQC hearing the Assessee contradicted his previous declarations and his same attorney, by stating that the payment of the instalments took place in 2002 and 2003, and not in 2001 and 2002 (as he had previously declared).
- d) The Assessee failed to prove the legitimacy and lawfulness of the sources for the financing of this property, both those indicated in the declarations, and those for the first time indicated during and after the administrative investigation, failing to provide conclusive evidence justifying the lack of declaration of such sources, and/or the financial capacity of each of the donors and lenders, including:

- i. whether his father had the financial capacity to make a gift of 1.500.000 ALL, considering that in the same years he purchased an allegedly incomplete three stories villa for the price of 1.000.000 ALL, completing it successively;
 - ii. whether his brother " " had lawful incomes justifying his contribution to the purchase of the apartment, considering that - according to the evidence produced by the same Assessee before the hearing - it was only in October 2002, therefore long after the donation, that " " registered his activity in Italy: it is worthy to note that before then " " s only known activity was his extensive and lucrative engagement in the exploitation of prostitution in Italy, for which he was convicted and served sentence;
 - iii. whether the brother in law, " " , had the financial capacity to finance the 300.000 ALL donated to the Assessee for the financing of the works in his apartment.
- e) The Assessee failed to prove he had sufficient lawful and legitimate funds to finance this property. He alleged - only after the vetting declaration - that he had received significant donations and contributions (in particular: donations from the in-laws amounting to a total of 1.000.000 ALL, donation of 300.000 ALL from his brother in Law, his wife's savings for a total of 350.000 ALL, which are listed by the Assessee to justify his financial shortcomings in the year 2003, as well as sources of creation of a deposit on 14.04.2006). Under article D paragraph 3 of the Constitution Annex, income can be considered in order to justify assets only if it has been declared. Furthermore, the Assessee failed to submit evidence confirming the existence, lawfulness and legitimacy of such contributions.
- 5.2. The declaration of asset described above under 2.2 is still found to be inaccurate and incomplete. His explanations neither provide rebuttal evidence, nor respond to a financial and economic logic when addressing the financial analysis. Furthermore, the IQC seems to have accepted as evidence only the mere statements of the Assessee, who on more than one occasion contradicted himself. In fact:
- a) The parameters used by the Assessee to compute the living costs in rebuttal to the IQC financial analysis did not follow a sound methodology, and the Assessee applies them inconsistently in his own analysis;

- b) Declared incomes and not previously declared incomes were both equally used by the Assessee in his financial analysis, so that there are several discrepancies between the Assessee's periodic declarations and what was declared in his financial analysis;
- c) The Assessee's elaboration of the travel costs followed an unclear methodology, contradicting the one ordinarily used by both IQC and Appeal Chamber, and providing alternative values to those identified by the IQC in his financial analysis, at times even contradicting the Assessee's very same statements, as it is the case with the trip to Greece of 05.2018, for which the Assessee in the initial questionnaire declared costing EUR 2.500, while in answering to the result of investigation declared costing EUR 1.500. This gives the clear impression that the Assessee adapted travel cost to his financial status (see also, on this, the replies of the Assessee during the IQC hearing), and cast a shadow on the overall credibility of the justifications provided by the Assessee;
- d) The Assessee for the first time after the termination of the investigation alleged that his father had, among his sources of income, return interest from one pyramid company. The alleged income is not proven (because the available documents only prove an expense from the Assessee's father, with no evidence of the return).
- e) Finally, the Assessee's declaration about his change of liquidity over the years, shows he accumulated resources which he is unable to justify with his incomes. This means the Assessee did not have the possibility to accumulate 2.400.000 ALL in cash at the end of 2014 as he declared, which means he could not justify the amount ALL 1.500.000 invested on 25.10.2016 at Bank and the amount declared as cash balance in the Vetting declaration of ALL 1.200.000,

5.3. The declaration of the asset described above under 2.3 is still found inaccurate and incomplete. The Assessee's explanations neither provide rebuttal evidence, nor respond to the fact that the use of this vehicle was never declared, nor to the evidence indicating the Assessee and his family enjoyed its intensive use, amounting to *de facto* ownership or, in any event, an use which should have been declared in the vetting declaration. In fact:

- i. The Assessee's explanation focuses only on the "fictitious" ownership of the vehicle and does not reply to the lack of declaration of its use;
- ii. the Assessee's main argument is that the high number of TIMS hits is consequence of multiple border crossing in his travels to and from Tropoja, and

alleges that his overall use of the vehicle for travels abroad amounted to a mere 23 trips; the Assessee explains that since he has an official vehicle, he did not need a second one;

- iii. An in dept analysis of the TIMS record and a comparative analysis of the use of this vehicle show the Assessee used the vehicle for a higher number of journeys than those he admits, including destinations other than Tropoja;
- iv. Compared to this intensive use, it is significant that the formal owner, *** , never used that car for a single trip abroad. This further convinces about the exclusive use of the car by the Assessee.

5.4. The overall financial status of the Assessee clearly shows the Assessee lacks, to a significant amount, financial resources to justify his assets and expenses, which leads to the conclusion the Assessee lacked full disclosure during the asset assessment. Nothing of significance was proven by the Assessee after the conclusion of the investigation. The Assessee's submission of his own financial analysis in response to the one prepared by the IQC may not be considered as proving his claims, and reference is made here to the shortcomings already highlighted above under 5.2.

Lacking any supporting evidence, the Assessee's explanation of his finances over the years remains unsubstantiated.

In this sense, as said above, it is not correct to include among the lawful sources of income the undeclared and unproven donation of ALL 300.000 allegedly made from the brother in law of the Assessee. It is also not reasonable to consider the living expenses of the household of the Assessee as if amounting to "0" in the period 1992-1994, and in the very low amount alleged by the IQC in the period 1997-2003 (periods in which, vice versa, the IQC considered all incomes alleged by the Assessee and spouse). But even admitting those very favorable conditions for the Assessee, it results nonetheless that the resources and savings declared by the Assessee in his entry declaration and during his tenure, were not sufficient in the year 1992-2003 (with a minus of at least 1.742.953 ALL) and in the period 2004 – 2016 (with a minus of 2.700.059 ALL), with an overall exposure in the whole period of over 4.443.012 ALL.

In practical terms, the Assessee's standard of living and registered expenses cannot be justified with his declared and registered incomes, which means that he could not afford

the apartment, could not finance the registered savings, nor he had sufficient financial resources to keep the minimum standard of living in the identified period.

Noted however the Assessee does not have any outstanding liability, and that all assets previous liabilities are fully paid, it shall be concluded the Assessee did have at his disposal undeclared financial resources or income, by this lacking full disclosure during the asset assessment, as per article 61 paragraph 3 Vetting Law.

6. Because of the foregoing, the undersigned International Observers recommend an appeal against the IQC Decision of the 1st of July 2019 against the assessee Artan Madani, Chief Prosecutor of the District Court Prosecutor's Office of Kavaja.

Tirana, 26th July 2019

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